



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

December 21, 2009

✓ Mr. Rob McNelis  
Santee Chamber of Commerce

REDACTED

**Warning Letter Re: FPPC No. 05/314, Jack Dale, City of Santee, Santee Chamber of Commerce, Santee School Board, Save the Santee General Plan**

Dear Mr. McNelis:

The Fair Political Practices Commission (the "FPPC") enforces the provisions of the Political Reform Act (the "Act"),<sup>1</sup> found in Government Code section 81000, et seq. This letter is in response to a complaint filed against the Santee Chamber of Commerce ("Chamber") by Van Collinsworth that alleged that the Santee Chamber of Commerce failed to file a campaign statement of organization and subsequent campaign disclosure statements in connection with mailers sent out by the Chamber in connection with the Proposition "X" local ballot measure in 2005.

The FPPC has completed its investigation of the facts in this case. Specifically, the FPPC found that the Chamber failed to file a statement of organization and subsequent campaign disclosure statements in connection with two mailers sent out in connection with Proposition "X." The first mailer contained a message from the then-President of the Chamber, Dan O'Brien, along with a DVD whose label contains express advocacy advocating the defeat of Proposition "X." The second mailer is the "Santee Echo" which contains express advocacy for the defeat of Proposition "X."

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<sup>1</sup> The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

The Act provides that a "Committee" is any person who makes independent expenditures totaling one thousand dollars (\$1,000) or more in a calendar year. Section 82013. The term "person" includes any association, including a Chamber of Commerce. Section 82047. For organization such as the Chamber, FPFC Regulation 18215 (b)(1) applies, and is commonly referred to as the "first-bite of the apple" rule. The Commission has established this rule for organizations that exist primarily for purposes other than making contributions or expenditures (multi-purposes organizations), where the organization's members or donors have no reason to suspect their payments will be used for political purposes because the organization has not made contributions or expenditures in the past. Under this rule, the first time an organization uses dues or other receipts to make contributions or expenditures, the organization's members or donors are presumed to have gained knowledge that the funds they have donated may, in the future, be used for political purposes. This is the "first bite."

Accordingly, once the organization has made its first political contributions or expenditures totaling \$1,000 or more, the presumption that donors to such organizations do not have reason to know that the payment would be used to make contributions or expenditures no longer applies. For the remainder of that year and the following four years, any donor to the organization would presumably know or have reason to know that funds with which the donations will be commingled may be used for political purposes. If a subsequent contribution or expenditure of \$1,000 or more is made by the organization during the applicable period (current year plus 4 following years), the organization becomes a recipient committee, and any donations or membership fees it receives after the "first bite" contribution or expenditure of \$1,000 or more has been taken, are deemed to have been received for political purposes, and the sources of any funds used by the organizations to make those contributions would be subject to disclosure on a reasonably apportioned basis.

Any Committee, as defined under Section 82013 and Regulation 18215 must file a statement of organization, as described under Section 84101. A committee must also file semi-annual statements campaign disclosure statements, as required under Section 84200, et. seq.

The Chamber's actions violated the Act because you made an initial independent expenditure of \$1,000 or more for the first mailer. This was your "first bite of the apple" under Regulation 18215. The second mailer, which was an independent expenditure over \$1,000, triggered your requirement to file a statement of organization and semi-annual campaign disclosure statements.

This letter serves as a written warning. The information in this matter will be retained and may be considered should an enforcement action become necessary based on newly

discovered information or future conduct. Failure to comply with the provisions of the Act in the future will result in monetary penalties of up to \$5,000 for each violation.

A warning letter is an FPPC case resolution without administrative prosecution or fine. However, the warning letter resolution does not provide you with the opportunity for a probable cause hearing or hearing before an Administrative Law Judge or the Fair Political Practices Commission. If you wish to avail yourself of these proceedings by requesting that your case proceed with prosecution rather than a warning, please notify us within ten (10) days from the date of this letter. Upon this notification, the FPPC will rescind this warning letter and proceed with administrative prosecution of this case. If we do not receive such notification, this warning letter will be posted on the FPPC's website ten (10) days from the date of this letter.

Please feel free to contact me with any questions you may have regarding this letter.

Sincerely,

REDACTED

GARY S. WINUK  
Chief, Enforcement Division